NO. 50759-1-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

TAJMA EATON,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY
JUVENILE DEPARTMENT

The Honorable Leonid Ponomarchuk, Judge

BRIEF OF APPELLANT

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RULES, STATUTES AND OTHERS

A. ASSIGNMENTS OF ERROR

1. The court misapplied the law.

2. The court erred in entering Conclusion of Law II.b. (appendix).

3. There was insufficient evidence to support the verdict.

Issues Pertaining to Assignments of Error

1. Where the issue was self-defense, did the trial court misapply the law when it considered appellant's failure to retreat, and used an objective standard instead of both an objective and subjective, standard to determine whether the appellant acted in self-defense?

2. Was there sufficient evidence to support the conviction?

B. STATEMENT OF THE CASE

1. Procedural Facts

On March 19, 2002, the King County Prosecutor filed an information in King County Superior Court, Juvenile Division, charging Tajma Eaton with fourth degree assault. CP 1; RCW 9.36.041.[1] On May 29, 2002, a fact-finding hearing was held, the Honorable Leonid Ponomarchuk, Commissioner, presiding.

As the conclusion of the hearing, Eaton was found guilty as charged. RP 86. She received a standard range sentence of 3 months community supervision and 12 month community service. CP 6-11. The court eventually entered findings of fact and conclusions of law. Supp. CP___ (Sub. No. 30, filed

[1] Eaton was also charged with harassment under a separate cause number. RP 2-3. That charge was tried together with the assault charge. RP 10-11. The court acquitted her of the harassment charge. RP 89.

September 17, 2002, attached as appendix).

2. Substantive Facts

Tajma Eaton and Andrienne Faulkner were best friends. RP 34, 57. At some point, however, their friendship ended because they started "'hanging out" with different people. RP 57.

On January 24, 2002, Eaton apparently had an altercation with Amia Johnson, Faulkner's new best friend. RP 29, 59. According to Faulkner, later that day while she was sitting in class, Eaton came into the classroom and called her a "bitch" and said she was going to beat her up. RP 28. Faulkner said she told Eaton to "bring it on, I'm not afraid of you." Id.

Eaton, however, testified that when she walked into the classroom, other students told Faulkner to "say it to her face." RP 59. Faulkner then began calling Eaton names and told Eaton she wanted to fight her. RP 59. Eaton left the room. RP 60.

Early the same evening, Eaton was riding in a car driven by YaKema Jones. RP 50. At a stoplight Jones pulled up next to a car driven by Madison Smith. RP 17-18. In the car with Smith was her friend Ashley.[2] RP 17. Smith described Faulkner as being like a member of her family. RP 24.

While sitting at the light, Smith said Eaton told her to tell Faulkner that she (Eaton) was going to shoot Faulkner. RP 18-19. Jones, who was driving the car Eaton was in and who was and sitting next to Eaton, testified that Eaton never mentioned Faulkner to Smith. RP 52. Eaton also testified she

[2] Ashley did not testify.

never said anything to Smith about Faulkner. RP 62-63.

On January 28, 2002, Eaton was at Shenae Gidray's house, another friend. RP 63. She was there with a group of people watching television. RP 63. Gidray is Faulkner's cousin. RP 31. While the group was watching television, Faulkner arrived. RP 32. Gidray told Faulkner that there were some people in Gidray's bedroom watching television. RP 32.

Faulkner testified that she went to open the bedroom door but it felt like someone inside the room was holding it shut. RP 32. She finally pushed the door open. When she did she was hit in the eye with someone's fist causing her to drop the bag she was carrying. RP 32-33. There were no lights on in the room so Faulkner did not see who hit her. RP 37. After she was hit, however, someone turned on the lights and Eaton was standing in front of her. RP 33, 41. She and Eaton began fighting. RP 33.

Eaton testified that she was in the bedroom watching television when there was a knock at the door. RP 64. Because she was sitting closest to the door, Eaton got up and opened it. Id. Faulkner was standing on the other side of the door. When she saw Eaton, Faulkner dropped her bag and made a fist. RP 65, 67. Eaton thought Faulkner was going to hit her so Eaton struck Faulkner. RP 65.

At the conclusion of the trial the court found Eaton guilty of assault. RP 86. The court rejected Eaton's self-defense claim. Id. The court reasoned that if Eaton believed Faulkner was going to hit her she should have backed away. Id. The court also stated that there was no evidence Faulkner raised her

arm. Id.

In its written findings and conclusions, the court concluded the state proved Eaton did not act in self-defense because Faulkner's ". . . behavior did not objectively justify respondent's claim that she struck Andrienne in order to prevent being harmed herself." Supp. CP__ (conclusion of law II b, appendix). The court entered no findings regarding credibility, whether Faulkner threatened Eaton, or whether Faulkner made a fist before Eaton struck her.

C. ARGUMENTS

1. THE COURT MISAPPLIED THE LAW REGARDING SELF-DEFENSE.

The State charged Eaton with assault in the fourth degree, which is " an unlawful touching with criminal intent." State v. Aumick, 126 Wn.2d 422, 426, 894 P.2d 1325 (1995) (quoting State v. Walden, 67 Wn. App. 891, 893-94, 841 P.2d 81 (1992). "[A] touching may be unlawful because it was neither legally consented to nor otherwise privileged, and was either harmful or offensive." State v. Garcia, 20 Wn. App. 401, 403, 579 P.2d 1034 (1978). In order to be offensive, the defendant must intend that the touch be such that it would offend someone who is not unduly sensitive. State v. Walden, 67 Wn. App. at 894, 841 P.2d 81 (1992).

Force used in self-defense, however, is not unlawful "where it is used by a party about to be injured . . . in preventing or attempting to prevent an offense against his or her person . . . in case the force is not more than is necessary." RCW 9A.15.020(3). Necessary force means that no "reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended." RCW 9A.16.010.

Where self-defense is at issue, the state bears the burden of proving the absence of self-defense beyond a reasonable doubt. State v. LeFaber, 128 Wn.2d 896, 903, 913 P.2d 369 (1996); State v. Janes, 121 Wn.2d 220, 850 P.2d 495 (1993). A claim of self-defense has both an objective and subjective component; self-defense "must be assessed from the standpoint of the reasonably prudent person, knowing all the defendant knows and seeing all the defendant sees." State v. Janes , 121 Wn.2d at 238.

The court misapplied the law. Although not referred to in its written findings, the court opined that Eaton should have backed away when she saw Faulkner at the door. RP 86. In other words, the court based its decision in part on the fact that Eaton did not retreat. It has long been the law in Washington that a person bears no duty to retreat where he is assaulted in any place where he has a right to be. State v. Allery, 101 Wn.2d 591, 598, 692 P.2d 312 (1984); see also, State v. Williams, 81 Wn. App. 738, 874, 916 P.2d 445 (1996) ("[W]here a jury may conclude that flight is a reasonably effective alternative to the use of force in self-defense, the no duty to retreat instruction should be given.").

Here the court made no credibility findings. It made no findings regarding the prior verbal altercation between Faulkner and Eaton. It made no findings regarding whether Faulkner balled her hand into a fist before Eaton struck her. The evidence shows Eaton was Gidray's invitee. She had the right to be in the bedroom. Thus, believing Faulkner was going to strike her, Eaton had no duty to retreat. She had the right to stand her ground and defend herself.

In a jury trial, where there is a possibility that the jury erroneously relied upon the defendant's failure to retreat, reversal is required. Williams, 81 Wn. App. at 744. There is a possibility the court relied on Eaton's failure to retreat in determining her guilt. Therefore, Eaton's conviction should be reversed.

The court also misapplied the law when it failed to assess Eaton's defense both subjectively and objectively. In its written findings, the court concluded that Faulkner's behavior did not "objectively" justify Eaton's claim of self-defense. Appendix (conclusion of law II.b.). The problem with the court's conclusion is that it failed to apply the proper self-defense standard. When viewed out of context, objectively Faulkner's behavior may not be seen as offensive. However, when viewed subjectively, Eaton had a reasonable belief Faulkner was going to assault her. Faulkner told her she was going to beat her up. Then, when Faulkner was standing at the door and saw Eaton, she dropped her bag and made a fist. That behavior, in the context of the threats she made earlier, justified Eaton's actions. Because the court did not apply the correct self-defense standard, reversal is required. See, State v. Haddock, 141 Wn.2d 103, 3 P.3d 733 (2000) (reversal of sentence required where court misapplies the law).

2. THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT THE VERDICT.

In every criminal prosecution, due process requires that the State to prove every element of the charged offense beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364, 25 L. Ed. 2d 368, 90 S. Ct. 1068 (1970). Where a defendant challenges the sufficiency of the evidence, the proper inquiry is, when viewing the evidence in the light most favorable to the prosecution, whether there was sufficient evidence for a rational trier of fact to find guilt beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 61 L. Ed. 2d 560, 99 S. Ct. 2781 (1979); State v. Green, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980).

It is well-settled Washington law that the absence of a finding of fact on a material issue is presumptively a negative finding against the party who bore the burden of proof. Taplett v. Khela, 60 Wn. App. 751, 759, 807 P.2d 885 (1991). Here, the state bore the burden of proof.

Whether Faulkner previously threatened Eaton, and whether she dropped her bags and made a fist prior to Eaton hitting her, are material issues. If Faulkner previously threatened Eaton then made a fist when she confronted Eaton at the bedroom door, it was reasonable for Eaton to believe Faulkner was about to hit her and for Eaton to strike Faulkner in self-defense. The absence of findings regarding whether Faulkner threatened Eaton and made a fist are presumptively findings that Eaton was threatened by Faulkner and Faulkner did make a fist, as Eaton testified.[3] Thus, based on this evidence,

[3] The court made no findings regarding the credibility of the witness.

Eaton reasonably believed she was about to be struck and she responded by hitting Faulkner in self-defense.[4]

Under these facts, Eaton lawfully acted is self-defense. Because Eaton lawfully acted in self-defense there was insufficient evidence to support her conviction for assault. Thus, this Court should reverse and dismiss her conviction. See, State v. Spruell, 57 Wn. App. 383, 389, 788 P.2d 580 (1990) (reversal and dismissal is the appropriate remedy where the evidence is held to be insufficient to support a conviction).

D. CONCLUSION

There was insufficient evidence to support the conviction. This Court should therefore reverse and dismiss the charge. The Court also misapplied the law. Thus, in the alternative, Eaton's convictions should be reversed and a new trial ordered.

DATED this _____ day of September 2002.

Respectfully submitted,

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_____

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[4] There is no issue regarding whether the force Eaton used was more than was necessary.